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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PTO/SB/64 (09-04)

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
31983-1007

First named inventor: MEYERS, J.

Application No.: 09/910,415

Art Unit: 3765

Filed: 07/20/01

Examiner: NERBUN, P.

Title: MASK FOR USE WITH EYEGLASSES

RECEIVED

MAR 03 2005

OFFICE OF PETITIONS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Amendment and Remarks (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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03/01/2005 YPDLITE1 00000007 09910415

750.00 DP

01 FC:2453

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

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Signature

2-24-05
Date

Rod D. Baker
Typed or printed name

35,434
Registration Number, if applicable

P. O. Box 26927
Address

(505) 998-1504
Telephone Number

Albuquerque, NM 87125-6927
Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Revocation of Previous Power of Attorney, New POA

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

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☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

February 24, 2005
Date


Signature

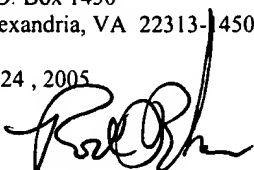
Rod D. Baker

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Rod D. Baker, Reg. No. 35,434

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OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent App. Serial No.: 09/910,415
Filed: 07/20/2001
Applicant: MEYERS, J.
Title: MASK FOR USE WITH EYEGLASSES

Mail Stop: Petitions
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

**STATEMENT IN SUPPORT OF PETITION TO REVIVE UNINTENTIONALLY
ABANDONED PATENT APPLICATION (37 CFR 1.137(b))**

Dear Sir:

Applicant respectfully requests that the Commissioner accept this Statement in Support of Petition to Revive Unintentionally Abandoned Patent Application (37 CFR 1.137(b)). This petition is to revive U.S. Patent Application Serial No. 09/910,415 to Meyers ("Meyers '415 application") for which a Notice of Abandonment was mailed on January 6, 2004. The Notice of Abandonment was mailed when Applicant's previous attorney of Record, Mr. Glenn Webb,

failed to file a response to an Office Action mailed on or about June 13, 2003. This statement and supporting declarations show that Applicant's entire delay in timely response (response due December 12, 2003) was unintentional. The Applicant never intended that the Meyers '415 application should be abandoned. Rather, the previous attorney of record for the application, Mr. Glenn Webb, suffered an apparent mental breakdown, neglected the application till it abandoned, and then engaged in a prolonged cover-up to conceal the fact of the abandonment. By express misrepresentations, Mr. Webb concealed from his colleagues (and from his client the Applicant) for a year the fact that he had allowed the Meyers '415 application to go abandoned.

This petition and supporting materials show that care was taken to ensure that a response had been timely made, but a timely response was nevertheless not filed due to a mental breakdown and/or misconduct by the attorney of record, and that this petition is being filed promptly after the Applicant became aware of, and was able to ascertain all the material facts regarding, the absolute abandonment of the Meyers '415 application and the lack of any continuing application thereon.

The error causing the unintentionally delayed response was human error attributable to the evident mental impairment, and dishonesty, of the previous practitioner of record, Mr. Webb. Mr. Webb was a partner in the law firm formerly known as Webb, Lewis & Meyers, LLC, and was the attorney originally responsible for the subject patent application. Most of the unintentional delay was due to Mr. Webb's having lied to his co-workers about the status of the application, leading them to believe that he had acted on the application when in fact he had not. Beginning in November 2003, and effectively until early 2005, Mr. Webb lulled his colleagues and clients into a false sense of security that either the Meyers '415 application, or a continuation application claiming priority thereto, was pending. Further, upon termination from his law firm,

Mr. Webb left the Meyers '415 application file in an incomplete and disorganized condition, preventing subsequent practitioners from having the information necessary to proceed with confidence regarding the application. The need for the present petition became certain only on February 11, 2005, when Mr. Webb refused to provide a simple "yes" or "no" answer to the undersigned attorney (not a member of his previous firm) asking whether a continuing application had been filed.

The attached declarations of Diane Weber, Liza Meyers, and Rod Baker establish the facts regarding the unintentional abandonment and delay. This statement incorporates by reference these declarations. Ms. Liza Meyers formerly was a partner of Mr. Webb's in the firm of Webb, Lewis & Meyers, LLC, and currently is a partner in the law firm of Lewis, Meyers & Scheid. Diane Weber was the docket clerk for the firm of Webb, Lewis & Meyers, LLC most knowledgeable regarding the firm's docketing software and procedures. The undersigned, Rod D. Baker, is an attorney with the law firm of Peacock, Myers & Adams, P.C., which firm was retained to assist the firm of Lewis, Meyers & Scheid in managing the latter's patent matters in the wake of Mr. Webb's breakdown and termination from that firm.

The declarations set forth the facts about the steps taken to ensure timely response, the date and the manner in which the Applicant became certainly aware of the abandonment of the application, and the steps taken to file a proper but prompt petition to revive. More specifically, the declarations and attached exhibits establish: (1) that despite the efforts of docketing personnel and other attorneys in his firm, Glenn Webb, evidently suffering from some sort of mental breakdown, failed to take necessary steps to maintain the pendency of the application; (2) Mr. Webb subsequently mislead others about his failure; and (3) that under the circumstances

this petition was filed promptly, within two weeks after the Applicant determined as certainly as possible that Mr. Webb had not filed a continuing application to maintain pendency.

The Commissioner's attention is respectfully invited to the declarations of the foregoing individuals in support of the petition, attached hereto as Exhibits 1-3.¹ The testimony of these declarants can be summarized as follows:

Ms. Diane Weber's declaration, Exhibit 1, provides information about the docketing system and procedures of Webb, Lewis & Meyers, and confirms that it functioned appropriately (except that Mr. Webb did not comply therewith). During late 2003, the law firm of Webb, Lewis & Meyers relocated to a new physical address in Denver, Colorado. As part of the relocation, the working office of Glenn Webb was physically moved from his home office into the new premises of the firm. Prior to the move, Mr. Webb was believed to have maintained a separate docketing system for patent matters under his supervision, including the Meyers '415 application. During late 2003 and early 2004, Ms. Weber endeavored to integrate Mr. Webb's docket into the firm's master docketing system.

Ms. Weber explains that the receipt on January 8, 2004, of a Notice of Abandonment on the Meyers '415 application was duly logged into the firm's electronic docketing system. A copy of the Notice of Abandonment was immediately forwarded to Mr. Webb, together with a request for instructions about how to docket the matter. In response, Mr. Webb notified Ms. Weber that a continuing application had been filed prior to the mailing of the Notice of Abandonment. Mr. Webb instructed Ms. Webb that there was nothing to be docketed at the

¹ This Petition is related to a similar Petition, filed on December 22, 2004, seeking to revive patent application Serial No. 10/427,147, which had been allowed to go abandoned by Mr. Webb for essentially the same reasons and under similar circumstances, i.e., Mr. Webb's apparent mental breakdown. The Commissioner may beneficially turn to that Petition for relevant argument and evidence, including a declaration of Mr. Kurt Lewis.

time. Upon Ms. Weber's information and belief, these representations by Mr. Webb to Ms. Weber were false. Ms. Weber relied on the misrepresentations, resulting in a failure to follow up on the status of the purported continuing application.

Ms. Liza Meyers' declaration, Exhibit 2, provides background regarding the Meyers '415 application, and the apparent mental breakdown and subsequent cover-up by Mr. Webb. Ms. Meyers describes the basics regarding the formation of the law partnership between her and Mr. Webb, and the events leading up to Mr. Webb's being asked to resign from the firm. Ms. Meyers, who interacted with Mr. Webb during the months preceding his termination, offers facts regarding the decline in Mr. Webb's apparent mental state and his conduct regarding his patent practice. Ms. Meyers describes how Mr. Webb's behavior changed during the summer of 2004, causing difficulty in obtaining his cooperation in maintaining and updating the firm's docket. Ms. Meyers describes efforts taken to rectify a deteriorating situation wherein Mr. Webb would fail to provide information to her and to firm staff regarding the status of pending matters, and whether pertinent deadlines were being met by Mr. Webb.

Ms. Meyers also testifies regarding Mr. Webb's evasiveness, and that he in fact lied on occasion to obscure or justify his conduct. Ms. Meyers mentions Mr. Webb's fits of anger, and states her belief that some species of mental impairment or breakdown was at the root of his failures. Ms. Meyers testifies regarding Mr. Webb's specific falsehoods and acts of cover-up specially pertaining to the Meyers '415 application. For example, she provides testimony and documentary evidence that Mr. Webb represented to her in November 2003 that he had prepared a response to an outstanding Office Action on the Meyers '415 application – a representation subsequently proved false by the Office's mailing of a Notice of Abandonment. Ms. Meyers also testifies, and provides documents in support, of a mis-representation by Mr. Webb on

August 25, 2004, that he had prepared and filed a response to an Office Action “last spring” –i.e., after the receipt of the Notice of Abandonment in January, 2004 – but that the application “should be close to issuance hopefully.” Ms. Myers states her belief that these representations likewise were false at the time Mr. Webb made them.

The declaration of Rod D. Baker, Exhibit 3, provides testimony directed mostly to the aftermath of Mr. Webb’s termination. Mr. Baker and his staff have worked with persons at Lewis & Meyers to evaluate the fallout of Mr. Webb’s conduct, and to address and manage pending patent matters. This task has involved, among other things, the need to perform a sort of “triage” on known matters by prioritizing their levels of urgency and merit, and taking action to prevent further lapses and abandonments.

Mr. Baker’s declaration provides information about the fact of his firm’s taking, as a courtesy to Lewis & Meyers, the role of assisting Lewis & Meyers in minimizing the jeopardy of Mr. Webb’s conduct, and maintaining the ongoing patent matters he left behind. Mr. Baker’s declaration endeavors to provide the context of the present petition, and recites as succinctly as possible some of the activities undertaken during the period November 2004 to the present to remediate the widespread harm resulting from Mr. Webb’s breakdown.

The Commissioner’s attention is respectfully invited to the statements in Mr. Baker’s declaration collectively showing that this petition is only one piece of a major rehabilitation project. Had the Meyers ‘415 application been the only matter neglected by Mr. Webb, the need to file, and the actual filing, of this petition perhaps could have been accomplished earlier.

But, as Mr. Baker’s declaration shows, the feat of dealing with Mr. Webb’s misconduct is wide-ranging and still ongoing. The time between Mr. Webb’s termination and the filing of this petition was occupied by a project comprehending several major tasks. It was first necessary to

identify, insofar as possible, all the clients for whom Mr. Webb had provided, or promised to provide, patent law services. As explained in other declarations besides Mr. Baker's, this task was slowed by the fact that Mr. Webb in latter months labored in virtual isolation, conducted much of his business exclusively by e-mail, provided little information to staff about his doings, and left a spotty record in his abandoned files.

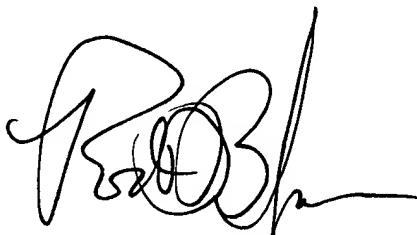
As matters came to light, it was necessary to prioritize them for action, with Mr. Baker and others acting to prevent pending matters from going abandoned, or issued patents to lapse. As succinctly explained in Mr. Baker's declaration, the Meyers '415 application was not the only matter on the agenda, it being necessary to act in a significant number of other individual patent applications belonging to a variety of small-entity clients. Further, a vast patent portfolio, including a sizeable number of foreign patent applications and patents, of a major corporate client evidently had been neglected by Mr. Webb. It was necessary to perform a due diligence review of the portfolio, identify matters requiring urgent attention, consult with the corporate client, and act on items, many pertaining to foreign matters some of which Mr. Webb himself had no power of attorney. All of the foregoing was undertaken during November 2004 through January 2005, while both law firms continued to attend to their regular — and full — legal practices unrelated to Mr. Webb's docket.

Finally, Mr. Baker's declaration offers insight into the timeline leading up to this particular petition to revive the Meyers '415 application. Because (as mentioned in the Weber and Myers declarations) Mr. Webb had provided false and misleading information to others at the Webb, Lewis & Meyers law firm, the remaining members of that firm had been lead to believe that the Meyers '415 application was not in jeopardy, rather that Mr. Webb had filed a timely continuing application therein. Accordingly, Mr. Webb's placating lies made it

unintentional that the present petition was not earlier filed, because a sense of immediacy (in view of the plethora of other "headaches") did not develop until the true status of the application had been confirmed.

In view of the above statement and exhibits, it is respectfully requested that Mr. Webb's former client, the Applicant, not suffer for his mental breakdown and resulting neglect, that the Commissioner accept the Petition to Revive Unintentionally Abandoned Patent Application, and that he accept the response to the last Office Action as having been unintentionally delayed and reinstate the application from its abandoned condition.

Should the Commissioner desire additional information, including supplemental declarations or documents, he is invited to contact the undersigned.

By: 
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Attachments: Exhibits 1-3
Applicant's Response to Office action mailed 06/13/03